

The complaint

Mr D complains about a car he acquired through a hire purchase agreement with BMW Financial Services (GB) Limited trading as ALPHERA Financial Services (BMWFS). He refers to having problems with the car immediately after taking possession of it, along with further problems which have ultimately resulted in engine failure.

What happened

The background to this complaint and my provisional findings were set out in my provisional decision of 26 October 2023. My provisional decision set out the following:

In July 2021 Mr D acquired a used car. The car was approaching four years old, had travelled approximately 17,400 miles and cost £23,480. Mr D has provided evidence of an initial fault with the car shortly after he got it. The car had multiple other problems and then a more significant issue with the engine has resulted in the car being unusable since the beginning of 2023.

An independent report was carried out in February 2023, by which time the car had travelled 25,865 miles. The report refers to a grating noise emanating from within the engine and a fault code referring to a problem with cylinder 3. This issue has caused the car to be unusable and Mr D has been without the car since it broke down.

Mr D's complaint was considered by one of our investigators, who set out why they considered the complaint should be upheld. In summary, they concluded the car should be repaired, along with other things, and BMWFS broadly accepted the recommendation. Mr D remained unhappy with the findings and referred to the likely problems in arranging the repairs to the car as he said he had been told by two garages that they would not work on the car because of previous poor repair work.

As the parties could not reach agreement Mr D asked for the complaint to be considered by an ombudsman.

What I've provisionally decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Although I am minded to uphold this complaint I have reached significantly different conclusions around the redress required to resolve matters. I am therefore issuing a provisional decision, to give both parties an opportunity to comment on my initial findings, before reaching my final decision.

I'll start by outlining that I don't intend on commenting on everything that occurred, or every complaint point, concern, or issue the parties have raised. Instead, I'll focus on what I think is important in reaching a decision which is fair and reasonable in all the circumstances. I don't mean this as a discourtesy to either party, instead it reflects the informal nature of this service and my role within it. But I'd like to reassure both parties that I've considered all the

information they've provided when reaching my provisional decision.

All parties appear to accept the car is defective and something needs to be done to put things right. But for completeness it is worth reiterating why I consider BMWFS is responsible for the quality of the car and why it is reasonable to allow Mr D to reject the car and end his agreement with BMWFS.

Mr D acquired the car through a hire purchase agreement with BMWFS and as the supplier of the car, BMWFS is responsible for the quality of the car. Where the car is found to not be of satisfactory quality, BMWFS can be held liable for that. The Consumer Rights Act 2015 (CRA) is relevant legislation when considering the quality of goods and services. This essentially says that the car should be of satisfactory quality at the time it's supplied to Mr D. Satisfactory quality is what a 'reasonable person' would expect, considering amongst other things the age and price of the car. Section 9 of the CRA refers to satisfactory quality and notes that the quality of goods includes their state and condition. It goes on to list the following aspects, amongst others, of the quality of goods, (a) fitness for all the purposes for which goods of that kind are usually supplied; (b) appearance and finish; (c) freedom from minor defects; (d) safety; (e) durability.

The used car that Mr D acquired in July 2021 cost over £23,000, was approaching 4 years old and had travelled approximately 17,000 miles. When considering a car of this age and mileage it would in my view not be unreasonable to expect it to be showing signs of wear and tear and not be in the same 'as new' condition that it would have been in when first manufactured. This will be in relation to the mechanical components and its cosmetic appearance. The price Mr D paid for the car was considerably cheaper than the cost of the car new, and this is to take into account the general condition, mileage and wear and tear the car had experienced since first being manufactured.

Mr D has referred to a number of problems with the car, starting immediately after he got it. The car had to be towed to a garage twice and the last issue has prevented the car from being used. I will focus on the current problem with the car as it is the most significant and has had the most impact on the car.

There is no dispute there is a problem with the car and the inspection report is sufficient evidence in my view to demonstrate there is a serious problem with the car's engine preventing the car from being used. The inspection report refers to the time and mileage that has elapsed since Mr D acquired the car and concludes that because of the time, and in particular 8,400 miles, that the fault was not present or developing at the time the car was supplied. The inspection report does not however appear to give any consideration to the requirements of the CRA, or more specifically the CRA requirements around durability.

As referred to above, one element of satisfactory quality under the CRA relates to durability and that ultimately means that goods should last a reasonable amount of time. Exactly what is a reasonable amount of time will depend upon a number of factors but of significant relevance here in my view are the fault and the mileage the car has travelled. The fault is a significant problem within the engine. The engine is obviously a key part of the car and generally speaking it would be reasonable to expect the engine to last the lifetime of the car. Again, what the lifetime of the car equates to in years and miles is not clearly defined. But I don't think it needs to be to decide this case. The car was about six and a half years old and had only travelled 25,865 miles when the engine failed. This is in my view a significant premature failure as I consider a reasonable person would expect the engine of the car to last significantly longer than this.

I have seen nothing to suggest Mr D has misused the car or done anything to cause the engine to fail. Having considered all that has been provided in this case so far, I am satisfied

the car, and in particular the engine, was not sufficiently durable when considering the requirements of the CRA. As it was not sufficiently durable, I am satisfied the car was not of satisfactory quality.

BMWFS has agreed to reimburse Mr D for the costs of repairing the car but Mr D is unhappy about having the car repaired. I can appreciate Mr D's concerns and have noted what he has already said about other garages not wanting to carry out the repairs. BMWFS has not agreed to a franchised dealer undertaking the repairs and Mr D would be required to source his own repairer who was willing to carry out the repairs. I don't think that will be an easy task from what Mr D has explained. Engine repair, or more likely replacement, is a significant task and one at great financial cost. Mr D would be expected to pay for the repairs and seek reimbursement from BMWFS. This is also not an easy task as the costs are significant and Mr D has explained there has been a significant change in his family life over recent months. In addition to this, the car has now been idle for a significant amount of time. By the time any repairs would be arranged it would be approaching a year since the car failed. And, while I don't consider it necessary to refer to the previous issues in detail here, Mr D has had a number of problems previously with the car, numerous visits to the garage and several repairs.

Having considered the full circumstances of this complaint I do not consider repairing the car to be a reasonable remedy, but I am persuaded, for the reasons set out above, that Mr D should now be allowed to reject the car and end his agreement with BMWFS. BMWFS should therefore now end Mr D's hire purchase agreement with nothing further owed. It should arrange, at its own cost, to collect the car from its current location and ensure Mr D does not remain liable for any associated costs, such as storage costs. If Mr D has a personalised registration plate on the car that he wishes to keep or transfer to a different vehicle, BMWFS should ensure Mr D is given sufficient time to arrange this before the car is sold after being collected from its current location. I should stress that if Mr D is looking to keep the registration plate, he will need to make the arrangements with the relevant authorities.

Mr D paid a £1,500 deposit to the car and this should be refunded along with interest. For the periods Mr D had use of the car I consider it reasonable for Mr D to pay for that use through the monthly hire purchase repayments. It is not however reasonable for Mr D to be expected to pay for the use of the car since the engine failure and BMWFS should therefore refund the monthly repayments Mr D has paid since the engine failure. Interest again should be added to these refunded amounts.

Mr D has referred to incurring insurance costs for the car while it could not be used and has asked that these be refunded. Mr D did however tell us that he has been using a family member's car and it is quite likely that his insurance enabled him to drive that car under the same existing policy he had with the failed car here. I do not therefore consider it reasonable to require BMWFS to refund the insurance costs.

If Mr D wishes to provide supporting evidence that demonstrates I am mistaken on this point and he should therefore be reimbursed the costs of insurance I would ask that he provides this in response to the provisional decision.

Mr D has referred to incurring breakdown/recovery costs of £220 and £175 and it would be reasonable in the circumstances for these to be refunded to him, again with interest. Interest on this and all refunded amounts should be calculated on 8% simple interest per year from the date of each payment until the date of settlement.

Mr D has referred to incurring additional costs for driving in a clean air zone as the car he was borrowing was not compliant. These are costs Mr D would not have incurred had he had

use of the car that broke down. It is not unreasonable for Mr D to be reimbursed these additional costs as they are costs he would not have incurred had BMWFS supplied a car of satisfactory quality. The copies of the payments for these charges that Mr D has provided do not however show Mr D has actually paid these amounts. Should Mr D like me to consider these further I would ask that he shows supporting evidence of him paying these amounts, through a bank statement. The statement can be redacted but must show the corresponding payments and Mr D's name as the account holder. I will then reconsider these further.

Finally, I consider the problems caused by being supplied a car that was not of satisfactory quality have caused Mr D some considerable trouble and upset. The car has suffered numerous issues, he has been without the car and has had to make alternative arrangements, and this again has been at a time when his family has been going through a significant event. In addition to the above, BMWFS should pay Mr D £300 in recognition of the distress and inconvenience this has caused him.

My provisional decision

My provisional decision is that I uphold this complaint and direct BMW Financial Services (GB) Limited trading as ALPHERA Financial Services to settle the complaint in accordance with what I have set out above.

Mr D responded to my provisional decision and provided copies of his bank and credit card statements. These showed £48 of payments for ULEZ charges and 2 direct debit payments of £45.50 each, for road tax. Mr D says that the car was declared off the road in March 2023.

We received no response from BMWFS.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In the absence of any further arguments from the parties, I have come to the same overall conclusions, for the same reasons, as set out in my provisional decision.

Mr D has provided evidence of the payments totalling £48 for the ULEZ charges and I'm satisfied these are reasonable expenses that Mr D should be reimbursed for as he would not have incurred these if he was supplied a car of satisfactory quality. Mr D has also provided evidence of the road tax payments made while he did not have use of the car and I think it would also be reasonable for these to be refunded to him. Mr D incurred other costs while using a replacement vehicle and it is unreasonable to expect him to incur costs for the vehicle that he could not use. BMWFS should therefore refund the £90 Mr D paid towards the car tax.

Putting things right

I'm satisfied that Mr D was supplied with a car that was not of satisfactory quality and for the reasons set out above, BMWFS should now take back the vehicle and end his agreement with nothing further owed.

BMWFS should arrange, at its own cost, to collect the car from its current location and ensure Mr D does not remain liable for any associated costs, such as storage costs.

I remind the parties again that if he has a personalised registration plate on the car that he wishes to keep or transfer to a different vehicle, BMWFS should ensure Mr D is given

sufficient time to arrange this before the car is sold after being collected from its current location. I should again stress that if Mr D is looking to keep the registration plate, he will need to make the arrangements with the relevant authorities.

Mr D should receive a refund of the £1,500 deposit paid towards the car, along with interest. BMWFS should refund the monthly repayments Mr D has paid since the engine failure. Interest again should be added to these refunded amounts.

BMWFS should also refund the additional expenses Mr D has incurred, for the breakdown/recovery costs of £220 and £175. Plus, the £48 ULEZ charges and £90 road tax, with interest. And finally, BMWFS should pay Mr D £300 for the trouble and upset caused.

Interest on the refunded amounts should be calculated on 8% simple per year from the date of each payment until the date of settlement.

My final decision

My final decision is that I uphold Mr D's complaint and direct BMW Financial Services (GB) Limited trading as ALPHERA Financial Services to settle the complaint in accordance with what I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 11 December 2023.

Mark Hollands
Ombudsman